

AMERICAN ARBITRATION ASSOCIATION

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In the Matter of the Arbitration between:

**FRATERNAL ORDER OF POLICE,
LODGE #5 (“Union”),**

-and-

CITY OF PHILADELPHIA (“City” or “Employer”)

Grievant: Sgt. Brandon Ruff ().

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OPINION and AWARD

AAA Case No. 01-16-0005-4393

BEFORE: Robert A. Grey, Esq., Arbitrator

HEARING DATES: January 18, and February 16, 2018, at American Arbitration Association, 230 South Broad Street, Philadelphia, PA 19102

APPEARANCES:

FOR THE UNION:

Formerly: Jennings Sigmond, P.C.

By: Marc L. Gelman, Esq., Shareholder
(At hearing and on post-hearing submission)

Presently: Willig, Williams & Davidson

By: Richard G. Poulson, Esq., Partner
(Change of representation subsequent to post-hearing submission)

FOR THE EMPLOYER:

City of Philadelphia Law Department, Labor and Employment Unit

By: Cara E. Leheny, Esq., Divisional Deputy City Solicitor

INTRODUCTION

The Philadelphia Police Department (“PPD”) suspended and dismissed Grievant for Conduct Unbecoming, on the basis of an off-duty incident that occurred on August 3, 2014, at the PPD 35th District. The Union seeks that the charges be rescinded and expunged, and that Grievant be made whole in all respects. The City seeks denial of

the grievance.

STIPULATED ISSUES

Was the 30-day suspension and dismissal of Grievant, Brandon Ruff, for just cause?

If not, what shall be the remedy?

BACKGROUND

The hearing of this grievance was held pursuant to the parties' Collective Bargaining Agreement ("CBA") on January 18 and February 16, 2018. Both parties appeared by counsel and were afforded full, fair and ample opportunity to present and challenge evidence, examine and cross-examine witnesses, and argue their positions. All testimony was given under oath or affirmation and direct observation by the Arbitrator. The proceedings were transcribed by a court reporter and an official transcript was produced. Neither party questioned the arbitrability or fairness of the proceedings. The record was closed upon receipt of the parties' post-hearing submissions.

This Opinion and Award is based upon detailed and thorough review and analysis of the entire record, including the Arbitrator's assessment of witness credibility, conflicting testimony, and the relative probative value of all evidence in the record. All testimony, exhibits, and party positions have been considered in rendering this Opinion and Award, whether or not specifically addressed herein.

STIPULATED FACTS

At the start of the hearing, the parties submitted a written stipulation containing

the following 11 numbered paragraphs, *verbatim*:

1. *On November 20, 2006, Brandon Ruff was appointed as a Police Officer Recruit in the Philadelphia Police Department.*
2. *On May 18, 2007, Ruff was promoted to Police Officer 1. Ruff served in the 17th Police District and then was transferred to the 25th Police District.*
3. *On January 31, 2014, Ruff was promoted to Police Sergeant, and assigned to the 16th District.*
4. *On August 3, 2014, the events at the 35th Police District leading to the current disciplinary charge occurred.*
5. *On August 25, 2014, Ruff filed a federal civil rights complaint against the City of Philadelphia, Sergeants B [REDACTED] [sic] and L [REDACTED], and Officers E [REDACTED] [sic], B [REDACTED], T [REDACTED], and Sgt. M [REDACTED].¹*
6. *On February 1, 2015, an arrest warrant was issued for Ruff, charging him with False identification to law enforcement authorities.*
7. *On February 2, 2015, Ruff was charged with Conduct Unbecoming, Section 1-§021-10 (Any incident, conduct, or course of conduct which indicates that an employee has little or no regard for his/her responsibility as a member of the Police Department), and suspended for 30 days with intent to dismiss.*
8. *On Feb. 2, 2015, Philadelphia Lodge #5, Fraternal Order of Police filed a*

¹ Sergeants L [REDACTED] and M [REDACTED] were promoted to the rank of Sergeant in [REDACTED]; on the incident date (8/3/14) they were both Police Officers. For consistency with documentary evidence pertaining to the incident, ranks in effect on the incident date will be used in this Opinion.

grievance challenging Ruff's termination.

9. *On February 25, 2015, Ruff was served with a Notice of Intention to Dismiss.*
10. *Effective March 5, 2015, Ruff was dismissed from the Police Department.*
11. *On December 12, 2016, Ruff pled guilty to the charge of disorderly conduct, a summary offense.*

The Notice of Dismissal, dated March 5, and served upon Grievant on March 6, 2015, states, *verbatim*:

You are hereby notified that effective 3/5/15 you are dismissed from your position with the City of Philadelphia as referred to above for the following reasons:

CONDUCT UNBECOMING, SECTION 1-§021-10 (Any incident, conduct, or course of conduct which indicates that an employee has little or no regard for his/her responsibility as a member of the Police Department.)

On Sunday, August 3, 2014, approximately 6:30 PM, you were involved in an off duty incident at the 35th District, with on duty police officers. While off duty and in plainclothes, you approached the 35th District front service window and were met by Officer M■■■■ L■■■. You had a small burgundy in color travel bag and told Officer L■■■ that you had guns in it that you wanted to turn in. Officer L■■■ asked you if you owned the guns and you replied, "No." Officer L■■■ then asked you where the guns came from and you replied, "I don't know." Officer L■■■ asked you, "How do you bring a bag of guns to a police station and don't know anything about them?" You replied, "Officer, why are you asking me so many questions and why are you hype with me?" Officer L■■■ replied, "I wasn't being hype, it's just that you can't bring a bag of guns into a police station and say you don't know anything about them." You then told Officer L■■■, "They came from a family member." Officer L■■■ asked who the family member was. You replied, "a cousin." You then added, "Officer, why are you asking me so many questions? I just want to turn in some guns to the police station." Officer L■■■ replied that she needs to investigate in the event that any of the guns were stolen or used in a crime. You then said that you wanted to speak with a supervisor, so Officer L■■■ went to get a supervisor. Officer L■■■ E■■■, backed up by Officer A■■■ B■■■, went to the lobby area to retrieve the bag of guns from you. You handed her the bag of guns and she slid the bag of guns through the window.

Officer E [REDACTED] also began to investigate. You stated that your cousin was in a lifestyle you personally didn't agree with and that your cousin was tired of the lifestyle and wanted to get rid of the guns. You said you picked the guns up from your cousin. Officer E [REDACTED] asked where you met your cousin. You were being very boisterous and defensive stating "33rd & Diamond. Do you want to know what corner I was standing on?" Officer E [REDACTED] was writing on a 75-48 what she was told. Officer E [REDACTED] asked if you had any identification, and you replied, "No, I don't have any ID." Officer E [REDACTED] asked if you had a driver's license, and you replied, "No I never did." Officer E [REDACTED] asked if you had state identification and you replied, "No." When Officer E [REDACTED] asked you if you had a job, you replied affirmatively. Officer E [REDACTED] said, "If you have a job, you have identification." You told her, "I haven't had ID since I lived in Florida." Officer E [REDACTED] asked you for your name. You told her "Ryan." Officer E [REDACTED] asked "Ryan, what?" You told her "Ryan Jones." Officer E [REDACTED] asked you for your date of birth, and you said, "10-11-86." Officer E [REDACTED] was present and corroborates this conversation. She did not recall the first name (Ryan) that you gave but she recalled it was "something Jones." According to Officer E [REDACTED] you were fidgety and said, "Y'all trippin. Why are you asking me these questions? I thought I could just bring these guns here and leave them. What about the no questions rule?" Officer E [REDACTED] said, "That's a certain time of the year where people bring in guns and they give gift certificates. When you bring three guns in a bag to us, we have to ask you questions." You stated, "I'm not trying to hear that. Y'all giving me a hard time." Officer E [REDACTED] went to get the Operations Room Supervisor, Sergeant D [REDACTED] B [REDACTED]. Officer E [REDACTED] was going to run your name to see if you had a valid license or other identification. Officer E [REDACTED] again explained to you that they had to investigate and that no one was trying to lock you up. As Sergeant B [REDACTED] was walking over, you walked out of the building.

Officer E [REDACTED] told Officer J [REDACTED] T [REDACTED] that you left the building. With that, Officer E [REDACTED], Officer D [REDACTED] F [REDACTED], Officer T [REDACTED], Officer B [REDACTED], Officer L [REDACTED] and Sergeant B [REDACTED] also went outside. Sergeant B [REDACTED] and the other officers were trying to calm you down, saying, "Sir calm down." Sergeant B [REDACTED] told Officer T [REDACTED] to pat you down because you had a bulge coming from your waist area. Officer T [REDACTED] patted you down and recovered a Glock, Model 23, .40 caliber, Serial # [REDACTED] (privately owned by you) in a holster, loaded with 14 rounds. Sergeant B [REDACTED] asked you if you had a gun permit and if you had identification. You replied, "No." Officer T [REDACTED] tried to place your arms behind your back, and you stated, "No, you're not putting cuffs on me. Get off me." Officer M [REDACTED] M [REDACTED] [sic] arrived and took out his Electronic Control Device and told you to put your hands behind your back. You made a comment that you would not be tased. Officer L [REDACTED] put her hand on your shoulder and said, "Calm down, we are on

Broad Street. Please don't do this." Officers M [redacted] [sic] and T [redacted] were able to handcuff you. As the officers walked back to the building with you, Officer L [redacted] asked, you, "Sir, do you have any ID on you?" You replied, "Yes, it's in my pocket." You then said, "All this because I wanted to bring these guns to a police station. What happened to turning in guns anonymously at a police station?" Officer L [redacted] said, "Sir, you can't bring in a bag of guns to a police station and walk out of the building." You then asked, "Is that the lieutenant in the parking lot?" Officer L [redacted] replied, "yes." You then said, "I want to see him too." Officer L [redacted] asked Lieutenant J [redacted] T [redacted] to come inside. As they walked up the steps, you said, "Wait until you find out who I am." They [sic] you yelled to the lieutenant, "Hey J [redacted]" You were taken inside the 35th District court room. When they went inside the 35th District court room, Officer T [redacted] searched you and retrieved a Philadelphia Police Department identification card and a Pennsylvania Municipal Police Officer's card. Officer T [redacted] asked you, "You're a sergeant? Why didn't you identify yourself?" You did not reply. Sergeant B [redacted] asked you the same thing. You replied that you were "turning these guns in for my piece of shit nephew." The three guns were placed on Property Receipt # [redacted] and the bag was placed on Property Receipt # [redacted]. Your personal weapon was placed on Property Receipt # [redacted] and was returned to you. One of the guns was in stolen status at the time you possessed it. The three guns that you had in your possession that night were: 1) Taurus 9mm, Model #PT 24/7 PRO, black, Serial # [redacted], in stolen status, reported stolen on 11-7-10 from [name and address redacted by Arbitrator]; 2) Bryco Arms 380, Model #Jennings T380, nickel, Serial # [redacted], and 3) Taurus revolver, 38 special, Model #85, blue, Serial # [redacted].

During this incident, Officers L [redacted], E [redacted], F [redacted], T [redacted], M [redacted] [sic], B [redacted] and Sergeant B [redacted] were all on duty and in uniform. According to all those interviewed (Officers L [redacted], E [redacted], F [redacted], T [redacted], M [redacted] [sic], B [redacted] and Sergeants B [redacted] and M [redacted]), you never identified yourself as Brandon Ruff nor did you identify yourself as an off duty sergeant with the Philadelphia Police Department. You did identify yourself to officers E [redacted] and B [redacted] as Ryan Jones with a date of birth of 10-11-86. Your date of birth, according to your Pennsylvania Driver's license, is [redacted].

On 2/2/15 in the presence of Captain Patrick Kelly #56, Internal Affairs Division, Captain Joseph Bologna #110, 19th District, Lieutenant John Barker #390, Internal Affairs Division, Timothy Strange, Attorney, Fraternal Order of Police and Micahel [sic] Trask, Representative, Fraternal Order of Police, you were given your Gniotek Warnings and an opportunity to respond to the above allegations. You chose not to respond. You were placed on an immediate 30-day suspension, with the intent to dismiss.

Exhibit City 3.

POSITIONS OF THE PARTIES

The positions of the parties are drawn from their respective post-hearing submissions, *verbatim*, or nearly so. To signify this to the reader, the party positions are set forth single-spaced, in *italics*. Footnotes and references may be moved or omitted.

CITY POSITION

The 30-day suspension and discharge of Sgt. Brandon Ruff should be upheld because the City proved that it had just cause to discipline Ruff for Conduct Unbecoming, Section 1-§021-10 (“Any incident, conduct, or course of conduct which indicates that an employee has little or no regard for his/her responsibility as a member of the Police Department.”). Very few of the facts cited in the Notice of Dismissal are in dispute, and the disputed facts must be resolved in the City’s favor because Ruff is an admitted perjurer and the only one challenging those facts.

What Is Disputed: The key disputes in this case are:

- *Did Ruff violate Department directives by refusing to provide information in response to I [REDACTED] and E [REDACTED] questions about the guns?*
- *Did Ruff give a false name and birthdate to E [REDACTED]?*
- *Did Ruff have a duty to identify himself to the officers when they detained him outside the 35th Police District, and did he do so?*
- *Did Ruff resist the officers when they detained him?*

Each of these questions must be answered in the department’s favor.

To answer otherwise is to conclude that five sworn officers chose to lie to the department and then repeatedly perjure themselves before a federal jury and an arbitrator, all to ensure that an individual that they did not know, and only interacted with for approximately 15 minutes, was fired. Their accounts of the events of August 3, 2014, have remained consistent from the start. On the other hand, Ruff’s version of events has become even more outlandish, and has shifted whenever he is confronted with information that contradicts his self-serving tale. The simplest explanation for what happened on August 3, 2014 is that Brandon Ruff wanted to do something he knew he could not—and should not—do, he got caught, and he does not want to take responsibility for his actions.

Ruff Violated Department Directives by Refusing to Provide Information About the Guns

Perhaps the most striking thing about this case is how desperately Ruff wants to pretend that his responsibilities were vague and undefined, when, in fact, Police Department directives clearly explained how everyone should have behaved. Those directives are so clear, in fact, that every other sworn officer was able to properly apply them to their conduct that day. It was only Ruff, who had recently studied the directives in order to pass the sergeant's exam, who found himself mystified as to why information needed to be collected when someone shows up at a district with three unidentified guns.

As Directive 144 clearly states, "any action taken off-duty action must always be consistent with Federal and State law and Departmental policies and procedures." C-7at § I(A). Ruff claims that he was entitled to act as a "private citizen," and not a police officer, when he turned in the guns, but his actions were inconsistent with his off-duty responsibilities. Officers are informed that all off-duty actions reflect upon both the individual officer's and the department's integrity, and, therefore, "must be beyond reproach and avoid even the appearance of any improprieties." *Id.* at § I(B).

There is no question that Directives 91 and 137 give explicit information on how to recover firearms and then properly document them. Directive 137 opens with the following policy statement: "It is the responsibility of all members of the Philadelphia Police Department to ensure that all laws and regulations pertaining to the carrying of concealed firearms are properly enforced." C-5 at § I(A). [FN1: Carrying a concealed weapon without a license to carry is a third-degree felony. *Id.* at § VII(A)]. Appendix A sets forth specific procedures to follow when a firearm is recovered; "the confiscating police officer" must complete a 75-48 describing the firearm and the circumstances surrounding its recovery, complete a property receipt for the recovered gun, and transport it and any witnesses to the pertinent investigative unit. *Id.* at Appx. A at § II(B). Property receipts must be completed with all applicable information, including a detailed description of the property, how and where it was obtained, and any other fact relating to the circumstances under which the property was obtained. C-6 at § IV(A)(1) & (2)(a)-(d).

Ruff admitted that he was trained on all of the directives, and, as a police sergeant, was responsible for reviewing his subordinates' paperwork, which would include 75-48's and property receipts. Because he said that he received the three guns from a friend who obtained them through an illegal arms transaction, he was the "confiscating officer," but he did not complete the 75-48s or property receipts for any of the guns, nor did he transport his friend, D■■■■ D■■■■ (who only Ruff seems to know as "D■■■■ J■■■■") to an investigative unit. [FN2: The story of "D■■■■ J■■■■" is bizarre. According to Ruff, he has known "D■■■■ J■■■■" for 10 years, and they are "like family." They are so close, in fact, that Ruff did not know that the tattoo artist's real name is D■■■■ D■■■■, even though D■■■■ D■■■■ is the name on "■■■■■■■■" website. Even though he never knew the real name of his friend, Ruff took possession of three guns that he knew "D■■■■/D■■■■" had obtained illegally. And Ruff then drove for miles in order to dispose of the guns in a district where neither he nor D■■■■

were likely to be recognized]. Ruff claims that he picked up these guns from his friend at the 1200 block of S. 21st Street, a block from the 17th District where Ruff spent approximately six years as a patrol officer. But Ruff did not walk or drive that block in order to turn in the guns in a place where he would be recognized. Instead, he chose to drive to the 35th District, in North Philadelphia, a trip which required him to get on highways to get to his destination.

When he arrived at the 35th, he refused to provide L ■■■ with any of the information that he knew the directives required her to obtain. He has insisted that he reasonably relied on his belief that there was a “no questions asked” policy regarding the surrender of firearms, but he admitted that he was never trained on such a policy and that it appears nowhere in the directives. Instead, he testified that he had an “impression” that such a policy existed, largely because, at some point while he was “growing up,” he heard radio advertisements for gun buyback programs.

Every other uniformed member of the Police Department unequivocally testified that there is no such policy and has never been such a policy. Instead, on limited occasions, the Department will participate in a buyback program that is located in a community area (such as a recreation center); the event typically lasts for one day, and members of the public can turn in weapons in exchange for gift cards or other rewards sponsored by local businesses. A SWAT team is present so that guns can be properly identified and secured, and uniformed officers assist in the documentation of the recovered weapons.

Ruff’s testimony is incredible and entirely self-serving on this point. It contradicts the department’s written policies, as well as the combined experience of all of the other uniformed personnel who testified. Even if he genuinely believed that a “no questions asked” policy existed— which is absurd—once he was informed by L ■■■ and E ■■■ that there was no such policy, he had a duty to respond truthfully and completely. If he was in any doubt as to whether L ■■■ and E ■■■ were correct, he should have identified himself as Sgt. Brandon Ruff and asked them to show him where in the directives it required him to provide this information. He did none of those things. He refused to answer questions, then provided false information, and then tried to leave before he was caught.

Ruff Provided a False Name and Birthdate to Officer E ■■■

In his opening, FOP counsel admitted that it “would be a problem” if Ruff provided a false name and date of birth to Echels. N.T. (1/18/2018) at 42:17-19. Ruff, then, has a problem because he admitted to doing so and perjured himself during his civil trial and the arbitration. This perjury, alone, constitutes conduct unbecoming a Philadelphia police sergeant.

Ruff’s claim on this point is that E ■■■ asked for the name and birthdate of the individual who gave him the guns, and not his own name. He told that same story at his deposition, his civil trial, and during the arbitration.

E█████ testimony, which was consistent throughout the trial and during the arbitration, revealed that Ruff claimed a “cousin” whose lifestyle he did not agree with gave Ruff the guns to turn in. When she asked where he picked up the guns, Ruff replied, “33rd and Diamond.” [FN3: If Ruff’s testimony from the arbitration is believed—that he obtained the guns from his friend, supposedly named “D█████ J█████,” on the 1200 block of South 21st St.—then he lied to E█████ on this point, too]. She then asked Ruff if he had any ID on him, and he claimed that he had not carried ID since he lived in Florida. She asked for his (Ruff’s) name, and he replied, “Ryan.” She said, “Ryan, what?” and he replied, “Ryan Jones.” She then asked for Ruff’s date of birth, and he said “10-11-86.”

On December 12, 2016, during his plea colloquy, Ruff finally told the truth. He admitted that E█████ asked for his (Ruff’s) name and his (Ruff’s) date of birth, and that he said “Ryan Jones” and “10/11/86” in response. C-13 at 15:20-23 & 16:24-17:1. When confronted with this sworn testimony, Ruff claimed that it was not the truth, but something he agreed to so that he could “get the guilty plea and summary citation.” N.T. (2/16/2018) at 288:15-16. But his guilty plea should be credited because it is consistent with E█████ testimony and, unlike Ruff, E█████ had no motive to lie.

Even if Ruff’s latest story is believed, and he lied during the plea colloquy, the only conclusion that can be drawn is that Brandon Ruff perjured himself. If his testimony that he lied to Judge Kai Scott at his plea hearing in order to “get” the plea is credited, then it means that he is willing to lie to get what he wants. He cannot be believed.

Ruff Had a Duty to Identify Himself When Confronted Outside of the 35th District, and He Failed to Do So.

Although Ruff claims that he had no duty to identify himself to his fellow officers, it is clear that he did. Directive 123 clearly states that “in any confrontation[,] the burden of proving identity rests with the officer being confronted, whether on or off-duty.” C-8 at § I(A). Confronted officers must:

- remain motionless;
- not turn toward the challenging officer, especially if holding a firearm;
- obey all directions from the challenging officer;
- identify themselves verbally as a police officer;
- inform the challenging officer of the exact location of their badge and identification card; and
- produce the identification in a slow, controlled manner without unnecessary movement.

Id. at § IV.

As Commissioner Ross explained, Directive 123 exists in order to prevent tragedies where a uniformed officer kills a plainclothes or off-duty officer. N.T. (1/18/2018) at

218:19-219:11. Other police departments had lost members in similar situations, but, so far, Philadelphia has been fortunate enough not to lose an officer “because of some confusion about who was who.” *Id.* at 218:21-219:2. Furthermore, identifying oneself as a “████” is insufficient to prevent a tragedy because not all officers know the code; even if they did, they could still mishear the █████. *Id.* at 220:16-221:19. That is why it is crucial that officers follow this directive to the letter.

Ruff claimed that Directive 123 did not apply in this situation because he was not taking police action when confronted outside of the 35th District. That interpretation is absurd and inconsistent with his own practice. Commissioner Richard Ross explained that it is not necessary to be armed and taking police action in order to be “confronted” under the terms of Directive 123.

A. You can be a confronted officer just by virtue of having on duty officers approach you in any encounter. . . . And if they have reason to stop you, question you, you have an obligation by this policy to indicate very clearly who you are and that you are a Philadelphia Police officer. You want to do that not only for them, to protect them, but to protect yourself.

. . . .

Q. [I]f I’m an off-duty officer and I’m walking down the street, and a uniformed officer comes around the corner and tells me to stop, at that point, am I being confronted?

A. You’re being confronted at that point. . . . At that point, just like any citizen walking the street, you have an obligation to comply with that officer’s order. You should stop, and then the first chance you get you should identify yourself as a police officer.

N.T. (1/18/2018) at 218:1-220:8. Other than Ruff, every uniformed officer who testified agreed that Ruff was confronted under the terms of the directive and had a duty to identify himself. Ruff himself admitted that he would identify himself as a police officer if he was pulled over by a police officer and had a loaded weapon in the car; he would do so even though driving is not taking police action. N.T. (2/16/2018) at 248:12-249:18.

Further, Ruff’s testimony that he identified himself as a law enforcement officer when confronted outside of the 35th Police District cannot be credited. According to him, he repeatedly told the confronting officers that he was a “████.” Ruff never testified that he identified himself by name or said that he was a police officer and could produce his identification, which permitted him to carry a concealed weapon. If he is to be believed on this point, he simply repeated, “I’m a █████,” even though saying it the first two times did not have the desired effect. He also claims he said, “My ID is my license to carry.” Neither of

these statements comply with Directive 123's instruction to verbally identify himself as a police officer, tell the confronting officers where his badge and identification were, or produce the identification in a slow and controlled motion.

There is absolutely no reason for Sgt. B [sic], and Officers L, M, E, and T to lie when they testified that Ruff never identified himself by name or the " " code during the confrontation on Broad Street. There was no reason for them to arrest Ruff if he properly identified himself. Each of them testified that if he had identified himself as a police sergeant, they would have immediately stopped and called their lieutenant.

Instead, from their perspective, a stranger walked into the 35th District with three guns—one of which was stolen—and then walked out without providing the information they needed. B [sic] correctly suspected that Ruff was carrying a concealed weapon, and they did, in fact, recover a Glock. They repeatedly asked him for proof that he had a right to carry the concealed weapon and only arrested him when he failed to provide such proof. Under these circumstances, Philadelphia and Brandon Ruff were fortunate indeed that the incident ended without someone being shot.

Ruff Resisted Arrest

Finally, Ruff's testimony that he never resisted arrest cannot be believed. B [sic], L, E, T, and M all testified that he refused to comply with instructions and told them that they were not going to put cuffs on him. Both T and M testified about how difficult it was to handcuff him because he tensed his shoulders and moved his arms about. In the end, they needed two sets of handcuffs to effectively restrain him. While they were trying to detain him, he threatened to sue them, he dragged his feet as he was escorted into the building, and he shouted things like, "This is why people don't trust the cops." These are not the actions of someone who is cooperating with the police.

A 30-Day Suspension, Followed by Discharge, Is the Only Appropriate Punishment for This Egregious Conduct

As a police sergeant, Ruff held one of the most crucial positions in the PPD. As Commissioner Ross explained, sergeants, as first level supervisors, "have the most contact . . . with all police officers across this city, as well as citizens, because they're out on patrol. And so there's an expectation that you're going to conduct yourself in an appropriate manner, but that you're going to provide guidance and leadership that is absolutely imperative in this organization." N.T. (1/18/2018) at 225:10-22. Police sergeants play an "integral role" in helping the Department run. They set an example for their patrol officers. Id. at 226:1-3.

Ruff's actions on August 3, 2014, were major policy violations that created a dangerous situation for both himself and the 35th District officers who confronted him that

day. First, he lied about who he was; as the Commissioner explained, misidentifying himself “is a major problem for a sworn police officer” *Id.* at 224:9-11. This would have been bad enough in a patrol officer, but Ruff was a supervisor and had an obligation to conduct himself

in a way that even police officers don’t, because the assumption is that [Ruff] accepted a certain level of responsibility, number one, but even before that, which could really be number one, which is the fact that, seemingly, [Ruff had] taken the painstaking efforts to read the policy so that [he] could pass the test. Which, then, is a logical assumption that [Ruff] read all of these policies and that [he was] more familiar with them than the average police officer on the street, or that [he] should be.

Id. at 224:16-225:5.

Second, Ruff’s refusal to identify himself as a police officer when he was confronted outside of the district was “just absolutely dangerous, and that – we are lucky that didn’t get out of hand” *Id.* at 228:11-13. Ruff’s conduct was “egregious . . . in every way,” and can only be described as “outlandish.” *Id.* at 229:13-14 & 21-23. His conduct demonstrated that he has little or no regard for his position as a sworn officer, let alone a supervisor holding one of the most important ranks in the department.

Third, Ruff has never taken responsibility for his conduct. His response after the incident was to accuse his fellow officers—who were following policy throughout the incident—of violating his civil rights. He pursued this claim through a federal trial, where a jury of his peers soundly rejected his self-serving tale. During the arbitration hearing, Ruff continued to deny any responsibility for what happened that day, insisting, instead, that every other officer had overreacted and behaved inappropriately. If reinstated, how can any fellow officer have confidence that Ruff will conduct himself appropriately and not blame others for his own misconduct?

Fourth, after his discharge, Ruff lied under oath. He did so either throughout his civil trial and this arbitration or during his plea colloquy. Returning him to the position of a Philadelphia Police Sergeant, with the awesome responsibilities associated with that position, will make it impossible for the Police Department to give him any duties that could require that he testify in court or swear out a warrant or affidavit of probable cause. Brandon Ruff admits that he lies to get what he wants. This is someone who cannot be trusted with the responsibility of exercising police powers.

The City requests that the grievance be denied. Although the City maintains that the only appropriate decision here is to uphold the discharge, if Ruff is reinstated, it should be without back pay. Further, because he has been separated for more than four years, he must comply with all pre-hiring requirements.

UNION POSITION

This case is not simply an exercise in determining whether or not the Grievant, Brandon Ruff, exercised poor judgment. He did. Despite his best intentions, the Grievant exercised poor judgment on August 3, 2014. Notwithstanding this statement of the obvious, the Arbitrator's inquiry must proceed under and entirely different framework - whether or not the City has met its burden of showing that it had just cause to terminate the Grievant.

Regardless of the City's thorough effort to attack the Grievant's character and question his decision-making on the date in question, it has failed to justify its disciplinary action under the just cause litmus test - one that may exist wholly independent of casting particular judgment upon the acts of a grievant. Indeed, an employee may exercise horrid decision-making, made in a particular context, and face no consequences because the resultant acts did not run afoul of any of the employer's particular policies or disciplinary provisions. Conversely, an employee may, on occasion, act entirely within reason and in accordance with generally accepted standards of society, yet, may still find himself subject to discipline by his employer due to the unique workplace policies in effect.

Here, there can be no doubt that by attempting to turn in firearms on August 3, 2014 at the 35th District, the Grievant was making a good-faith effort to remove dangerous firearms from the street where they could only cause harm. Rather than simply throwing them in the river or disposing of the firearms in an unlimited number of possible ways, or indeed, ignoring their existence altogether, the Grievant proceeded turn them in to the police under a good-faith belief that he was protected by some type of amnesty that would not require him to provide any personal information.

As was made clear at arbitration, he was mistaken in this belief. Nonetheless, his actions on August 3, 2014 should be judged through the framework of his subjective thought and the (mistaken) assumptions which guided his conduct. In other words, when he entered the 35th District on that day, he had no intention of doing anything other than performing a positive civic duty. The incident that followed was a direct result of his mistaken state of mind and his belief that the officers with whom he interacted in the 35th District were not adhering to what he believed to be the applicable departmental policies and procedures.

In issuing discipline, the City relied upon the overly broad provision of the disciplinary code that prohibits Conduct Unbecoming, at Section 1-021-10 (A) [Any incident, conduct, or course of conduct which indicates that an employee has little or no regard for his/her responsibility as a member of the Police Department.] By its own terms, this provision of the Disciplinary Code allows the employer to paint with an exceptionally broad brush when condemning particular behavior.

Yet, during the course of the two-day arbitration proceeding, it appeared that the City's justification in its attempt to meet its burden was based primarily upon two

accusations. First, the City asserted that the grievant lied to Officer E [REDACTED] by telling her that his name was Ryan Jones. Second, the City put on a great deal of evidence to support its finding that the Grievant violated Directive 123 regarding police confrontations. Each of the accusations is addressed below.

1. The Grievant Did Not Inform Officer Echels That His Name Was Ryan Jones

Unlike similar matters placed before an arbitrator, this issue does not necessarily appear to rest upon a credibility, or a “he said, she said” determination. Based upon review of the evidence, and after hearing the testimony at arbitration, this Advocate believes that the accusation against the Grievant regarding the name Ryan Jones is likely the result of confusion on the part of Officer Echels.

The undisputed record evidence established that the guns were originally in possession of an acquaintance of the Grievant named D [REDACTED] J [REDACTED] (originally known to the Grievant as “ [REDACTED] .”)[FN1: Although Jones did not appear at arbitration, Lieutenant E [REDACTED] testified that when he spoke with D [REDACTED] over the phone, he agreed that the firearms were his]. What is equally undisputed is that at the window at the 35th District, Officer E [REDACTED] and the Grievant engaged in a discussion regarding the origin of the guns, during which E [REDACTED] repeatedly asked the Grievant where he “got the guns?” Apparently, during the same exchange Officer E [REDACTED] asked the Grievant for his name.

Granted, the Grievant, believing that Officer E [REDACTED] did not have a right to question him in this manner, was far from forthcoming with this information. Nevertheless, he ultimately shared the requested information regarding the original possessor of the guns with Officer E [REDACTED] - D [REDACTED] J [REDACTED]. It appears that Officer E [REDACTED] interpreted “D [REDACTED] ,” a rather uncommon name, as “R [REDACTED] ,” along with the surname J [REDACTED]. Notwithstanding the Officer’s testimony that the Grievant provided this name in response to her question as to his identity, the Grievant credibly testified that he was answering her question about the guns when he provided this name. Consequently, Officer E [REDACTED] belief that the Grievant had provided a false name is simply mistaken.

In an after-the-fact attempt to discredit the Grievant, Officer E [REDACTED] testified that although she did ask the Grievant where he got the guns, and that he did initially respond “my cousin,” she never asked him the name of his cousin. The Grievant’s recollection of the discussion was significantly different. He testified that after he informed E [REDACTED] that he received the guns from his cousin, she asked for his cousin’s name.

By any measure of common sense or logic, the Grievant’s testimony must be credited. It simply belies all manner of reason that a police officer recording information such as this would fail to ask the Grievant for the name of his cousin after he had reluctantly identified “his cousin” in response to her previous question regarding who gave him the guns. Such a failure on E [REDACTED] part would call into question the adequacy of her conduct with respect to the entire interaction with Grievant.

Perhaps the most compelling piece of evidence in support of the Grievant's version of his discussion with Officer E [REDACTED] comes from an unlikely source - Sergeant D [REDACTED] B [REDACTED]. As this Arbitrator will recall, it was apparent to anybody who witnessed her testimony (or read her statements) that Sergeant B [REDACTED] was not pleased with the Grievant's conduct on August 3, 2014 - to put it mildly. The Sergeant made no effort to temper her disgust. However, her written statement provided on the date of the incident is a key piece of evidence in support of the Grievant's credibility. The following exchange was recorded on page 3 of her statement:

Q. Did you ever ask Sergeant Ruff where the guns came from?

A. Yes, I did. He said, "My cousin is in a bad way, and I didn't want him to have them."

Q. Did he identify his cousin by name?

A. No, not to me. I overheard someone say that the name on the 75-48 might [sic] his cousins [sic] name, but I don't know that for sure, nor do I remember where that information came from.
(IAB62)

This Arbitrator will recall the portion of Officer E [REDACTED] testimony during which she represented that she jotted the name R [REDACTED] J [REDACTED] on the back of a form 75-48 after the Grievant had represented to her that this was his name. Sergeant B [REDACTED] response to the questions above were provided on the night of the incident. It is therefore apparent that, notwithstanding E [REDACTED] representations, there was a portion of her back and forth discussion with the Grievant during which the identify of his cousin - [D [REDACTED] J [REDACTED] - was shared. Sergeant B [REDACTED] statement is significant proof that E [REDACTED] did, in fact, ask the Grievant for his cousin's name.

It is not argued that the Grievant was promptly forthcoming in providing his identity when first asked. As had been recognized, based upon his misunderstanding as to the non-existent amnesty protections in place, the Grievant was evasive and, arguably, temporarily lacked candor. However, such behavior does not subject the Grievant to discipline. He was not terminated, in part, for simply failing to provide his own name in a timely manner. While this may have been a poor decision and a lapse in judgment, the City has failed to identify any particular policy which such conduct would implicate. [FN2: As discussed below, the Grievant did not violate the only relevant policy on this subject]. Instead, it has gone, "all in" on the allegation that the Grievant falsely identified himself as Ryan Jones. For the reasons addressed above, this allegation was unproven.

2. The Grievant Did Not Violate The Department's Police Confrontations Policy

The City presented a great deal of evidence in an attempt to prove that the Grievant

violated Directive 123 concerning "Police Confrontations" (C - 8). More specifically, the City asserts that the Grievant failed to identify himself in accordance with the policy under the following applicable portion: "It must be absolutely clear in the minds of all sworn officers that in any confrontation the burden of proving identity rests with the Officer being confronted, whether on or off - duty. (C-8, Section I (A)) Thus, the City argues that the Grievant was "confronted" pursuant to the policy, and therefore, assumed the burden of identifying himself— a burden he did not meet. The City's reliance upon this Directive is misplaced.

Any reasoned analysis on the issue of whether the Grievant had a burden of providing his identity under Directive 123 rests upon whether or not he can be considered a "confronted officer" as it is identified by the Directive. Based upon any plain reading of the language cited above, the burden rests only with an officer who is involved "in any confrontation." The importance of this term of art is illustrated by the fact that there are only two definitions set forth in this Directive. A "challenging officer" is defined as "the uninformed or plain clothes officer who comes upon the scene where an unidentified armed person is observed." On the other side of the equation is a "confronted officer," who is defined as "a plainclothes officer on or off-duty, who may be armed and is taking police action and whose identity and objectives are not immediately apparent to the challenging officer."

If a police officer does not fall under the definition of a confronted officer as described above, he has absolutely no obligation to identify himself. Under the facts set forth in the record, the Grievant was not a "confronted officer," and thus, his failure to identify himself is not a violation of the policy.

This issue rests in large part upon whether or not the grievant was "taking police action" as it is intended by the defined term. During the course of the proceeding, the City repeatedly suggested that the Grievant's actions on August 3, 2014, constituted police action, without further support. Simply saying it is police action does not make it so.

Perhaps the most informative testimony on this issue came from the top - Police Commissioner Richard Ross. Rather than broadly assert that the Grievant's attempt to turn in the guns at the 35th District constituted police action - an unsupportable suggestion - the Commissioner approached the issue under a different tact. He testified that a confronted officer does not have to be taking police action in order to be subject to the obligations of Directive 123.

When confronted on cross-examination by the straightforward language of the policy which clearly requires the requisite taking of police action in order for an officer to be deemed "confronted," the Commissioner simply suggested that the Directive applies in a broader sense than the specific language contained therein. Such a suggestion is preposterous, and if true, raises significant due process concerns which, of course, would

strike squarely upon any just cause analysis.

Directive 123 cannot be read piecemeal with too narrow of focus upon the operative language without any consideration of context. When read en toto, it is quite apparent that the policy is intended to address officer safety so that one officer does not mistakenly confront another, likely in plain-clothes, under the belief that they may be engaging in criminal activity.

Stated differently, and quite bluntly, the Directive seeks to prevent the absolute worse-case scenario that one could possibly fathom - police officer accidentally shooting another police officer. Even a cursory review of section IV of the policy makes this clear. The detailed, step-by-step direction provided to the confronted officer is for the sole purpose of diffusing any potentially unsafe situation where a misunderstanding or miscommunication concerning the identity of the confronted officer could result in tragedy.

Such was not the case here, where the Arbitrator is confronted with a very different circumstance under which the officers in the 35th District - perhaps justified - were frustrated by the fact that the Grievant had, at least initially, failed to provide his name upon request. Although such a refusal may have been a lapse in judgment, the City's attempt to boot-strap Directive 123 to the situation should be rejected.

Conclusion

For all of the foregoing reasons, the City did not meet its burden in proving that it had just cause for the termination of Grievant Brandon Ruff and the grievance should therefore be sustained. Fraternal Order of Police Lodge No. 5 therefore requests that the discipline be rescinded, the Grievant be made whole in all respects, including the expungement of the charges from any and all records. The Arbitrator is additionally requested to retain jurisdiction for a reasonable period of time for purposes of clarification of his award.

DISCUSSION AND OPINION

Upon careful review of the entire record, the weight of the credible and probative evidence establishes that the City proved the charges contained in the Notice of Dismissal. The City also met its burden to prove that such conduct constituted Conduct Unbecoming, and that the 30-day suspension and dismissal of Grievant were for just cause. Therefore, the grievance must be denied.

Grievant's conduct, and course of conduct, under the facts and circumstances of

this incident, fit squarely within the definition of *“Any incident, conduct, or course of conduct which indicates that an employee has little or no regard for his/her responsibility as a member of the Police Department.”* Under the facts and circumstances of this record, the Union’s metaphor of this being a case of an employer *“relying upon an overly broad provision of the disciplinary code . . . to paint with an exceptionally broad brush.”* is not persuasive.

A critical factor in this arbitration is that on December 12, 2016, Grievant pleaded guilty to a summary count of Disorderly Conduct in the Commonwealth Court of Common Pleas, First Judicial District, Criminal Trial Division, in exchange for the Commonwealth dropping the charge against him of Providing False Identification to a Law Enforcement Officer. This criminal charge arose from the August 3, 2014 incident at the 35th District which is the subject of this arbitration. As part of the criminal proceedings, Grievant was duly sworn and examined by the Judge in open court, on the record. A transcript of the proceedings is in the arbitration record as Exhibit City 13.

Grievant testified under oath in the Commonwealth Court that: he was not under the influence of any drugs, alcohol or medication while testifying; that he understood he had the absolute right to go to trial instead of a guilty plea; that by making a guilty plea he was giving up certain pre-trial and appellate rights; that he was giving up his rights to trial knowingly, intelligently, and voluntarily; and that he was satisfied with his legal representation.

Additionally, the Judge directed Grievant to listen carefully to the facts the

Commonwealth would have produced had the matter gone to trial, and that after hearing them, those would be the facts to which Grievant would be pleading guilty. Grievant listened to the recitation of facts, and informed the Court that those were the facts to which he was pleading guilty. The Court then accepted Grievant's guilty plea. In pertinent part, the facts to which Grievant pleaded guilty, under oath in open court, were:

[O]n August 3rd of 2014, approximately, 6:30 p.m. inside of the 35th Police Direct [sic] at 5960 North Broad Street here in Philadelphia, if Officer L [REDACTED], Badge No. [REDACTED], were called to testify, she would state that she encountered the defendant while she was working at the window inside the 35th District. The defendant came up to the window and handed a small duffel bag to her and said that he wanted to turn in three guns.

Officer L [REDACTED] began to ask the defendant questions at which point the defendant became agitated and back-up officer, Officer E [REDACTED], E [REDACTED], went into the lobby to speak to the defendant. At that point Officer L [REDACTED] pulled that bag in through the window and later discovered that there were three guns inside the bag, a Taurus nine millimeter, a Walther arms .380, and a Taurus .380 caliber revolver. The first two of those firearms had been previously reported stolen.

While Officer E [REDACTED] was speaking with the defendant in attempt to ask him questions, she began to ask him for identification. He stated that he did not have identification. She asked him if he had a job. He said yes. She said if you have a job, then you have identification. He said I haven't had ID since I lived in Florida. Officer E [REDACTED] asked him his name at which point he said Ryan Jones. She asked him his date of birth. He said 10/11/86.

At that point Officer E [REDACTED] went to further investigate that information and the defendant left the lobby of the police station. As he was leaving, Sergeant B [REDACTED], B [REDACTED], Badge No. [REDACTED], and Officer T [REDACTED], Badge No. [REDACTED], observed him outside and saw a bulge resembling a firearm on his waist. They conducted a pat down of the defendant and removed that firearm, which was his privately owned Glock .40 caliber which he is allowed to carry because he was a police officer at the time, police sergeant at the time.

AS [sic] they began to attempt to arrest him, the defendant began to struggle and use profanity at which point the officers -- Officer M [REDACTED], M [REDACTED], Badge No. [REDACTED], removed his taser, pointed it at the defendant as Officer T [REDACTED] continued to struggle with him as he was handcuffed and brought back inside. At which point he was identified as a police sergeant and the investigation continued from there.

Exhibit City 13.

Grievant's sworn on-the-record criminal court guilty plea colloquy, and the facts to which Grievant pleaded guilty, are compelling. The pleaded-to facts corroborate the testimony of the City's arbitration witnesses. Grievant's arbitration testimony as to why his guilty plea, and these pleaded-to facts, should be given little or no weight, is neither compelling nor persuasive.

In light thereof, the Notice of Dismissal allegations, all proven by the City in this arbitration, will now be discussed in the context presented in the City's post-hearing submission, using the headings contained therein.

Ruff Violated Department Directives by Refusing to Provide Information About the Guns

Directive 91, "Property Taken Into Custody", unequivocally states: "*Any police employee, who receives or takes into custody any property or money, by any means or from any source, will immediately prepare a Property Receipt (75-3).*" Exhibit City 6.

Directive 137, "Firearms", unequivocally states: "*A. It is the responsibility of all members of the Philadelphia Police Department to ensure that all laws and regulations pertaining to the carrying of concealed firearms are properly enforced.*" Directive 137, Appendix A, "B. Firearm recoveries", unequivocally states: "*1. The confiscating police officer will: a. Prepare a 75-48 describing the recovered firearm and the circumstances*

surrounding the recovery. . . . c. Prepare a Property Receipt (75-3) for the recovered firearm, in accordance with Directive 91, entitled, 'Property Taken Into Custody', and transport the firearm and any witnesses to the pertinent investigative unit. . . ." Exhibit City 5.

Directive 91, "IV. Preparation of the Property Receipt (75-3)", unequivocally states: "A. *The police employee who takes initial custody of the article(s) will: 1. Complete all applicable blocks on the 75-3. . . . 2. Type or legibly print under 'Items of Property and Circumstances Under Which it was Received'; . . . c. How and where obtained.; d. Any other fact relating to the circumstances under which the property/money was obtained. . . .*" Exhibit City 6.

The record establishes that Grievant, an eight (8) year PPD veteran at the time, was aware of and familiar with the above Directives. Indeed, Grievant was promoted to Sergeant six (6) months before this incident, having studied for 18 months and ranked number 50 out of 3,600 PPD members on the promotional list for Sergeant, without veteran's preference or college points. Thus, the record establishes that Grievant knew that either he, or the police officer he turned the guns over to, would be *required* to comply with Directives 91 and 137, including providing the information required thereunder. Grievant did not intend to comply, did not comply, and refused to cooperate with the officers trying to comply. Grievant refused to provide information he knew was required to be provided. Then, he intentionally provided materially false information.

Grievant's assertion that he did not have to provide his identity on the date of

the incident because he believed in good faith that there was some sort of gun amnesty, gun buyback, or “no questions asked” gun-surrender program in effect “*pretty much at any time. I didn’t know it was select periods of time.*” (Transcript 2/16/18, 171), is preposterous and wholly unsupported by any credible evidence whatsoever. In fact, Grievant’s assertion is blatantly *contrary* to the credible record evidence about such programs. For example, on the rare occasions when such a program is in effect, it is *never held at a District*.

Additionally, the record establishes that Grievant’s conduct, and course of conduct, were intended to circumvent these Directives. Grievant took possession of the three guns on the 1200 block of South 21st Street (although he told Officer E [REDACTED] that he took possession at 33rd and Diamond). The 17th District – where Grievant was previously assigned for approximately six (6) years – is located exactly one (1) block away, on the 1200 block of South 20th Street. But Grievant did not bring the guns to the 17th District. Instead of walking or driving the guns around the corner to the 17th District, he drove approximately 11 miles to the 35th District – where he has never been assigned – to turn the guns in anonymously. Notably, Grievant was due at work the next evening, Monday night for Tuesday. If Grievant did not feel compelled to turn the guns in as soon as possible, one may reasonably wonder why he did not bring them to work with him the next night and turn them in at that time. If Grievant did feel compelled to turn the guns in as soon as possible, one may reasonably wonder why he did not immediately bring them around the corner, one (1) block away to the 17th District. Thus, the record supports the City’s assertion that Grievant took the guns to a

District where he would be less likely to be recognized as a member of PPD, to avoid identifying himself and the source of the three guns.

Police Commissioner Ross testified that illegal guns on the streets of Philadelphia are:

categorically our biggest issue we contend with, day in and day out, across this city. . . . Over 80 percent of our homicides are committed with handguns each and every year, over 1200 shootings, on average, which is something that is a very intractable [sic] issue that we struggle with, like many big cities across this country.

Transcript 1/18/18, 206-207.

It bears mention that one of the three handguns Grievant took possession of on August 3, 2014, and tried to anonymously turn in at the 35th District, was in *stolen status* since 2010.

Ruff Provided a False Name and Birthdate to Officer E [REDACTED]

Grievant's guilty plea colloquy included Grievant's admission that:

While Officer E [REDACTED] was speaking with the defendant in attempt to ask him questions, she began to ask him for identification. He stated that he did not have identification. She asked him if he had a job. He said yes. She said if you have a job, then you have identification. He said I haven't had ID since I lived in Florida. Officer E [REDACTED] asked him his name at which point he said Ryan Jones. She asked him his date of birth. He said 10/11/86.

Exhibit City 13. [Emphasis added].

The Union argues Officer E [REDACTED] was confused or mistaken, in that when Grievant said "Ryan Jones" (or "D [REDACTED] J [REDACTED]"), he was not identifying himself. Rather, posits the Union, Grievant was belatedly answering Officer E [REDACTED] earlier question: Who was the original possessor of the three guns? Putting aside, *arguendo*,

Grievant's colloquy admission, the Arbitrator credits Officer E [REDACTED] testimony that Grievant gave the false name and false birthdate specifically in response to her asking Grievant for *Grievant's* name and birthday. Notably, there is no suggestion or evidence that Grievant has ever had, or been known by, the name "Ryan Jones" (or "D [REDACTED] J [REDACTED]"). Neither "Ryan Jones" nor "D [REDACTED] J [REDACTED]" sound like "Brandon Ruff". Grievant's birthday is [REDACTED], not October 11, 1986. "[REDACTED]" and "October 11" do not sound like each other. "[REDACTED]" and "10/11" do not sound like each other. Thus, there is no credible evidence that Officer E [REDACTED] misheard or misunderstood Grievant's responses to her questions asking Grievant for *Grievant's* name and *Grievant's* birthdate.

The Union contends that Sgt. B [REDACTED] written IAB statement provided on the date of the incident (Exhibit City 4, page IAB62) is compelling evidence of Grievant's credibility regarding this element of the charges. The Arbitrator disagrees. Sgt. B [REDACTED] statement makes it clear that she had no first-hand knowledge, and that she only had uncertain information of uncertain origin – what might be called double or triple hearsay. Consequently, the Union's contention is not persuasive.

Thus, the Union's argument that Officer E [REDACTED] was confused or mistaken about Grievant providing a false name or birthdate is not persuasive. Grievant did not "*simply fail to provide his own name in a timely manner.*" In addition to Grievant's guilty plea colloquy admission that he falsely told Officer E [REDACTED] that he did not have identification, and that "*I haven't had ID since I lived in Florida*", the record establishes that Grievant then intentionally misidentified himself to Officer E [REDACTED] with a false

name and false birthdate.

Ruff Had a Duty to Identify Himself When Confronted Outside of the 35th District, and He Failed to Do So.

The parties dispute the applicability of Directive 123 “Police Confrontations” to this incident. The Arbitrator agrees with the Union that, “*Directive 123 cannot be read piecemeal with too narrow of focus upon the operative language without any consideration of context. . . . The detailed, step-by-step direction provided to the confronted officer is for the sole purpose of diffusing any potentially unsafe situation where a misunderstanding or miscommunication concerning the identity of the confronted officer could result in tragedy.*”

However, the Arbitrator disagrees with the Union’s assertion that, “*Such was not the case here, . . .*” Instead, the record establishes that Grievant’s conduct, and course of conduct, created a “*potentially unsafe situation where a misunderstanding or miscommunication concerning the identity of the confronted officer could result in tragedy.*”

In other words, *Grievant created a confrontational situation.* Grievant unreasonably and unjustifiably made it necessary for 35th District police personnel to reasonably and justifiably confront him. Grievant knew that he (Grievant) was a law enforcement officer, off duty and carrying a concealed firearm. *Grievant knew that he was a confronted officer*, in a confrontational situation of his own making. Under the facts and circumstances of this record, Grievant, off duty and in plainclothes, cannot *create* a confrontational situation with on duty officers in uniform, causing them to confront him in the proper performance of their duties, and then successfully argue that Directive 123 does not apply.

The record establishes that Grievant failed to follow *any* of Directive 123's steps for a confronted officer, not just Step 4: "Identify yourself verbally as a police officer in your communications with the challenging officer." It is undisputed that confrontational situations can have tragic and fatal results. Indeed, Directive 123 states that one of its main purposes is to avoid such consequences. In contrast to Grievant's Conduct Unbecoming, the 35th District personnel responded appropriately to this dangerous, potentially fatal, confrontational situation created by Grievant. Though repeatedly asked for identification during the incident, Grievant did not provide his real identity until after he was under arrest.

Ruff Resisted Arrest

In addition to failing to follow Directive 123's steps for a confrontational situation (again, created by Grievant himself), the record establishes that Grievant escalated the situation by verbally and physically resisting his lawful arrest. Grievant did so before, during and after being handcuffed. He did so outside, on North Broad Street, thus endangering not only himself and the 35th District personnel, but the public, as well – despite Officer I ■■■ imploring him not to do so.

CONCLUSION

Grievant's explanations for his proven egregious conduct, and course of conduct, on August 3, 2014, are neither credible nor persuasive. Based upon all of the above, the City had just cause to find that Grievant violated Disciplinary Code Section 1-§021-10.

PENALTY

The City contends that a 30-day suspension, followed by discharge, is the only appropriate punishment for Grievant's egregious conduct. The collectively negotiated maximum penalty for a first violation of Disciplinary Code Section 1-§021-10 is dismissal.

The City stresses that Grievant's actions were *major policy violations that created a dangerous situation for both himself and the 35th District officers who confronted him that day; were dangerous, egregious and outlandish, demonstrating that Grievant has little or no regard for his position as a sworn officer, let alone being a supervisor holding one of the most important ranks in the department; that Grievant has never taken responsibility for his conduct, continuing instead to accuse everyone else of overreacting and behaving inappropriately; that Grievant lied under oath, either throughout his civil trial and this arbitration, or during his plea colloquy; that returning him to the position of a Philadelphia Police Sergeant, with the awesome responsibilities associated with that position, will make it impossible for the Police Department to give him any duties that could require that he testify in court or swear out a warrant or affidavit of probable cause; and that Grievant cannot be trusted with the responsibility of exercising police powers.*

Under the proven facts and circumstances of this record, the City's penalty contentions are persuasive and compelling. The penalty imposed by PPD in this case was for just cause, and was not arbitrary, capricious, or excessive.

Therefore, based upon all of the above, the following Award is issued:

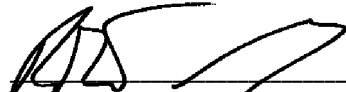
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AWARD

The 30-day suspension and dismissal of Grievant, Brandon Ruff, were for just cause.

Therefore, the grievance must be denied.

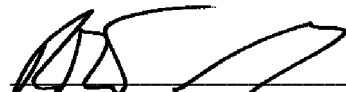
Dated: August 20, 2018


Robert A. Grey, Arbitrator

AFFIRMATION

I hereby affirm that I executed this instrument as my Opinion and Award.

Dated: August 20, 2018


Robert A. Grey, Arbitrator